Ascertaining Land Boundaries: A Legal Analysis

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- Why litigate about land boundaries?
- What is the role of the court?
- How to determine intents of parties?
- What evidence can prove boundaries?
- What are admissible boundary evidence?

Why litigate about land boundaries in Hong Kong?

- Extent of property ownership (e.g. 鄭振昇 對 楊偉信, DCCJ 372/2010, DC, 21 December 2011)
- Trespass on adjacent land (e.g. Liu Ma Cheung v Liau Yin Fu [2008] 5 HKLRD J5)
- Encroachment (e.g. Chau Ka Chik Tso v Secretary for Justice [2011] 2 HKLRD 387)
- Adverse possession (e.g. Tsang Tsang Keung v Fung Wai Man & Anor, HCA 11328/1996, CFI, 29 September 2000)

What is the role of the court in boundary disputes?

- To interpret the contents of the original conveyance, in order to determine what the parties intended to transact (Wigginton & Milner v Winster Engineering [1978] 3 All ER 436; Ali v Lane [2007] 1 P & CR 26)
- Therefore, it is a matter of construing the contract.

How to determine intents of original parties?

- Investors Compensation Scheme Ltd v West Bromwich Building Society (No. 1) [1998] 1 WLR 896, 912 per Lord Hoffmann:

'Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.'

What kinds of evidence can prove boundaries?

- Wigginton & Milner v Winster Engineering [1978] 3 All ER 436, 445 per Buckley L.J.:

'When a court is required to decide what property passed under a particular conveyance, it must have regard to the conveyance as a whole, including any plan which forms part of it. It is from the conveyance as a whole that the intention must be ascertained.'

What kinds of evidence can prove boundaries?

- L Schuler AG v Wickman Machine Tools Sales Ltd [1974] A.C. 235, 261 per Lord Wilberforce:

'The general rule is that extrinsic evidence is not admissible for the construction of a written contract; the parties' intentions must be ascertained, on legal principles of construction, from the words they have used...There are of course exceptions.'

What kinds of evidence can prove boundaries?

- Ali v Lane [2007] 1 P & CR 26 para 36 per Carnworth LJ:

'In the context of a conveyance of land, where the information contained in the conveyance is unclear or ambiguous, it is permissible to have regard to extraneous evidence, including evidence of subsequent conduct, subject always to that evidence being of probative value in determining what the parties intended.

What kinds of evidence can prove boundaries?

- Under the law of evidence, civil evidence is generally admissible if relevant and not excluded by an exclusionary rule.
- In other words, will a reasonable man consider the extrinsic evidence relevant to interpret the original parties' language in accordance with conventional usage?

Examples of admissible extrinsic evidence?

- Pre-contractual documents
- Subsequent conveyances
- Photographs
- Topography of the site
- Boundary features
- Expert evidence
- Witness testimony

Case study: Liu Ma Cheung

- Facts: Parcels clause in Block Crown Lease of Lot 329

'All that piece or parcel of ground situate, lying and being in Survey District No. 206 [illegible] in the New Territories in the Colony of Hongkong set out and described in the Schedule hereto opposite to the name of such lessee And which said piece or parcel of ground is more particularly delineated and described on the plan or plans of Survey District No. 206 [illegible] attached hereto according to the lot number set out in the Schedule hereto opposite to the name of such Lessee and marked on the said plan.'

- Issue: Did the house on adjacent Lot 325 trespass on Lot 329?
- Question: Was the judge correct to say that 'one must start by looking at the block Crown lease and the delineation of Lot 329 on the DD sheet in resolving this location and boundary dispute'?

- Strachey v Ramage [2008] 2 P&CR para 32 per Rimer LJ:

'... the case in which the parcels clause gives a verbal description of the land but also refers to the land as being "more particularly delineated" on the plan. In such a case, in the event of any uncertainty as between the words and the plan, the latter will ordinarily prevail over the words and will control the verbal description'.

Case Study: 鄭振昇 對 楊偉信

- Parcels clause in original conveyance for 7 & 8 Lok Yip Road:

  'ALL THOSE 11 equal undivided 550th parts or shares of and in the land which for the purpose of identification is shown on the Block Plan attached hereto and thereon coloured Pink ... TOGETHER with the sole and exclusive right to the use and enjoyment of ALL THAT WORKSHOP NO.7 on the 1ST FLOOR and the Flat Roof thereof of the Building as shown and designated "7" on the Floor Plan attached hereto and thereon coloured Pink the saleable area of the said Workshop No.7 is approximately 115.068 square metres and the saleable area of the said Flat Roof is approximately 20.028 square metres (hereinafter referred to as "the said premises") TOGETHER WITH...'

- Parcels clause in the assignments

'ALL THOSE 11 equal undivided 550th parts or shares of and in ALL THAT piece or parcel of ground... now known as "FESTIGOOD CENTRE (豐樂工貿中心)" ("the Building")

TOGETHER with the exclusive right and privilege to hold use occupy and enjoy ALL THAT WORKSHOP... on the 1ST FLOOR and the Flat Roof thereof of the Building as more particularly shown on the Floor Plan annexed hereto and thereon coloured Pink.'

- Issue: What is the boundary of patio common to adjourning units of 1/F 7 and 8 Lok Yip Road?

- Question: Was the judge correct to refer to the floor plan attached to the assignment in interpreting the intentions of the original parties?

- Strachey v Ramage [2008] 2 P&CR para 31 per Rimer LJ:

  The formula "for the purpose of identification only"... is specifically not intended to identify its precise boundaries. The use of such a plan is therefore strictly only appropriate for a case in which the verbal description in the parcels identifies the limits of the land with adequate precision since it is a formula which indicates that the verbal description is intended to be decisive in that respect.'

Conclusion

- The court interprets what original parties intended to transact in the conveyance.
- Test: Reasonable man having all available background knowledge at the time of contract.
- Take the conveyance as a whole, including parcels clause and plan for identification.
- Consider extrinsic evidence with probative value if unclear or ambiguous.